

HOUSE BILL NO. 493

INTRODUCED BY J. COHENOUR

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A MANUFACTURER TO PRINT ACCEPTED
5 PRACTICES FOR THE HANDLING OF GENETICALLY ENGINEERED WHEAT ON ALL GENETICALLY
6 ENGINEERED WHEAT SEED PACKAGE LABELS; LIMITING THE LIABILITY OF A FARMER THAT PLANTS
7 GENETICALLY ENGINEERED WHEAT; PROVIDING FOR A LIABILITY DEFENSE FOR MANUFACTURERS
8 OF GENETICALLY ENGINEERED WHEAT SEED; DEFINING IN WHAT INSTANCES A MANUFACTURER IS
9 LIABLE FOR INJURY SUFFERED AS THE RESULT OF GENETICALLY ENGINEERED WHEAT; PROVIDING
10 FOR THE RECOVERY OF DAMAGES, ATTORNEY FEES, AND OTHER REASONABLE COSTS; AND
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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13 WHEREAS, the Legislature finds that Montana's wheat industry is a central and vital component of the
14 state economy, that Montana's export markets have recognized Montana wheat to be among the finest in the
15 world, and that Montana is the leading producer of organic wheat; and

16 WHEREAS, Montana has a unique national reputation for producing high-quality crops, and the state's
17 economic viability is dependent on maintaining this reputation; and

18 WHEREAS, Montana's economic and environmental health are dependent on family farms that make
19 up the backbone of a healthy rural economy; and

20 WHEREAS, supporting current and future family farmers is a part of Montana's heritage; and

21 WHEREAS, once planted, genetically engineered crops have been shown to be dispersed into the
22 environment through means such as pollen drift, seed mixing, and the inadvertent transfer of seeds by humans,
23 animals, and extreme weather events; and

24 WHEREAS, scientific evidence supports the claim that genetically engineered wheat cannot be
25 successfully segregated from wheat that is not genetically engineered through current agronomic science,
26 agricultural practices, or the agricultural infrastructure; and

27 WHEREAS, the introduction of genetically engineered wheat may cause significant harm to domestic and
28 foreign market acceptance and a loss of value of Montana agricultural crops for Montana farmers and the grain
29 handling and grain processing industries; and

30 WHEREAS, liability for the effects of genetically engineered crops has unfairly fallen as much on farmers

1 who do not plant genetically engineered crops as on farmers who do, and it can be expected that liabilities
2 associated with the growing of genetically engineered wheat in Montana will be passed by the manufacturer of
3 genetically engineered wheat to the grower of the engineered variety and to farmers who do not plant genetically
4 engineered wheat; and

5 WHEREAS, the burden of ensuring that farmers are not harmed by genetically engineered wheat
6 technology should not fall on neighboring farmers or farmers who plant genetically engineered seeds if proper
7 planting instructions are followed; and

8 WHEREAS, the manufacturer of genetically engineered seeds can help prevent improper handling of
9 seeds by printing accepted practices for use on the seed package labels; and

10 WHEREAS, the manufacturer of genetically engineered seeds can help to reduce the litigation
11 surrounding the introduction of genetically engineered seeds by providing accepted practices instructions to the
12 farmer.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Farmers' Limited
17 Liability for Genetically Engineered Wheat Act".

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19 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 3], the following definitions
20 apply:

21 (1) "Accepted practices" includes scientifically sound handling practices that reduce the opportunity for
22 injury as well as the possible risks of injury as determined by extensive research. The accepted practices must
23 include instructions for handling the genetically engineered wheat as well as the possible risk of injury.

24 (2) "Extensive research" means research found in government reports, peer-reviewed scientific journals,
25 professional society reports, or personal observations of at least two reputable scientists or agronomists regarding
26 the use and consequences of genetically engineered wheat.

27 (3) "Farmer" means a person responsible for planting, managing, or harvesting a crop.

28 (4) (a) "Genetically engineered wheat" means wheat seed or a whole wheat plant or plant part modified
29 by methods including cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology,
30 such as gene deletion, gene doubling, introduction of a foreign gene, and changes in the position of genes when

1 achieved by recombinant DNA technology. The term includes scions identified by the national organic program
2 of the U.S. department of agriculture that are intended for planting and that are produced using a variety of
3 methods to genetically modify organisms or influence their growth and development by means that are not
4 possible under natural conditions or processes.

5 (b) The term does not include modification by the use of traditional breeding, conjugation, fermentation,
6 hybridization, in vitro fertilization, or tissue culture.

7 (5) "Handling" means the transportation, planting, storing, and harvesting of genetically engineered
8 wheat.

9 (6) "Injury" includes but is not limited to:

10 (a) loss of any price premium that would have accrued to a farmer by contract or other marketing
11 arrangement and that would have been otherwise reasonably available to the farmer or grain warehouse operator
12 through ordinary commercial channels;

13 (b) any additional transportation, storage, or related charges or costs incurred by a farmer that would not
14 have been incurred in the absence of crop contamination;

15 (c) any judgment, charge, or penalty for which a farmer of a nongenetically engineered crop is liable
16 because of breach of contract, including loss of organic certification for failure to deliver a crop or shipment free
17 of genetically engineered material or for delivering a crop or shipment that exceeds any contractually agreed
18 tolerances for the presence of genetically engineered material;

19 (d) market price reductions incurred by farmers that result from the loss of wheat exports, including
20 foreign and domestic markets; and

21 (e) a farmer's loss of livelihood or reputation caused by genetically engineered wheat.

22 (7) "Manufacturer" means a person, corporation, or other entity that produces genetically engineered
23 wheat for commercial purposes.

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25 **NEW SECTION. Section 3. Labeling of genetically engineered wheat seed packages -- liability.**

26 (1) A manufacturer must print on all genetically engineered wheat seed package labels the complete accepted
27 practices for the handling of the genetically engineered wheat.

28 (2) A farmer who follows the accepted practices for the handling of genetically engineered wheat is not
29 liable under this section for any injuries, claims, losses, or expenses, including attorney fees, caused by the use
30 of the genetically engineered wheat.

1 (3) A farmer who unknowingly comes into possession or uses genetically engineered wheat as a result
2 of natural reproduction and cross-pollination, seed mix contamination, or other contamination is not liable under
3 this section for any injuries, claims, losses, or expenses, including attorney fees, caused by the use of the
4 genetically engineered wheat.

5 (4) A manufacturer is entitled to a liability defense under this section if:

6 (a) the complete accepted practices instructions were printed on all genetically engineered wheat seed
7 package labels received by the farmer with whom the manufacturer has a seed contract;

8 (b) the farmer or a third party acted in gross negligence in causing contamination with genetically
9 engineered wheat;

10 (c) the farmer signed a contract with the manufacturer;

11 (d) the farmer received a training manual from the manufacturer; and

12 (e) the farmer would not have caused injury through the use of genetically engineered wheat seed if the
13 farmer had followed the manufacturer's contract, the accepted practices, and the training manual.

14 (5) A manufacturer is liable for injury suffered by any party because of genetically engineered wheat in
15 Montana if:

16 (a) the accepted practices were not printed on all genetically engineered wheat seed package labels;

17 (b) there is evidence to suggest that the provided instructions and accepted practices were not complete;

18 (c) there is evidence to indicate that the manufacturer misrepresented or underrepresented the possible
19 risks of injury to the farmer with whom the manufacturer has a contract or to neighboring farmers; or

20 (d) the manufacturer learned of the incorrect language printed on the label after the sale of the
21 genetically engineered wheat seed and failed to contact the farmer with whom the manufacturer has a contract.

22 (6) A plaintiff who prevails in an action under this section may recover compensable damages,
23 reasonable attorney fees, and other litigation expenses as part of the costs of the action.

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25 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified
26 as an integral part of Title 80, chapter 5, and the provisions of Title 80, chapter 5, apply to [sections 1 through 3].
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28 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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